

Message Text

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PAGE 01 LIMA 06437 01 OF 02 201500Z
ACTION L-03

INFO OCT-01 ARA-14 ISO-00 SNM-05 DEAE-00 CA-01 PPTE-00
/024 W

-----117777 201636Z /50

R 201407Z JUL 78
FM AMEMBASSY LIMA
TO SECSTATE WASHDC 1031

UNCLAS SECTION 1 OF 2 LIMA 6437

E.O. 11652: N/A
TAGS: SNAR PE
SUBJ: NARCOTICS LAWS

REFS: (A) STATE 170187, (B) LIMA AIRGRAM A-19 OF MARCH 2, 1978;
(C) LIMA 1882, (D) LIMA 1932

1. THE FOLLOWING PROVISIONS OF PERU'S NEW COMPREHENSIVE DRUG LAW,
REPORTED IN REFERENCES B, C AND D, ARE KEYED TO THE QUESTIONS
POSED IN PARA 2, REFTTEL A:

2. (1) POSSESSION: THE ONLY REFERENCE THAT THE LAW OF MARCH 2,
1978 MAKES TO POSSESSION OF NARCOTICS FOR IMMEDIATE PERSONAL CON-
SUMPTION (ART. 58, E) ESTABLISHES THAT THE MAXIMUM AMOUNT OF ANY
PARTICULAR DRUG WHICH IS TO BE SO USED MUST BE DETERMINED BY
MEDICO-LEGAL APPRAISAL. IN THIS ARTICLE NO DIFFERENTIATION IS
MADE AMONG NARCOTICS; I.E., CANNABIS, COCAINE, SYNTHETIC DRUGS,
ETC. IN PRACTICE THE POSSESSION OF COCAINE OR PASTE IN AMOUNTS
UP TO 100 GRAMS IS CONSIDERED TO BE FOR IMMEDIATE PERSONAL USE.
BEYOND THAT IT IS CONSIDERED UNAUTHORIZED POSSESSION.

(2) TRAFFICKING: THE LAW (ART. 57, E AND F) CONSOLIDATES THE
FOLLOWING CONTROLLED SUBSTANCES INTO A GENERAL TRAFFICKING
OFFENSE, PUNISHABLE BY NOT LESS THAN TEN YEARS IN PRISON:

-- CANNABIS
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PAGE 02 LIMA 06437 01 OF 02 201500Z

-- OPIUM CONCENTRATE

-- "DIVERSE VEGETABLE EXTRACTS SUSCEPTIBLE TO MISUSE"

-- HEROINE

-- OXICODONA

-- DET

-- DMT

-- (PLUS)- LYSERGIDA

-- MESCALINA

-- PARAHEXILO

-- PSILOCINA, PSILOTSINA

-- PSILOCIBINA

-- STP, DOM

-- TETRAHIDRO CANNABINOLES

-- COCAINE

-- DEXTROMORAMIDA

-- FENTATIL

UNCLASSIFIED

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PAGE 03 LIMA 06437 01 OF 02 201500Z

-- METHADONE

-- MORFINE

-- OPIUM

-- PETIDINA, MEPERIDINA

LONGER SENTENCES ARE IMPOSED ON THOSE WHO PROMOTE, ORGANIZE OR DIRECT GROUPS DEDICATED TO THE ILLICIT INTERNATIONAL DRUG TRAFFIC (MINIMUM 25 YEARS, ART. 55); THOSE WHO FORM PART OF THESE GROUPS DEDICATED TO THE ILLICIT INTERNATIONAL DRUG TRAFFIC (MINIMUM 15 YEARS, ART. 55); THOSE WHO PROMOTE, ORGANIZE, FINANCE DIRECT OR FORM PART OF ILLICIT NATIONAL TRAFFICKING GROUPS (MINIMUM 15 YEARS); OR TO THOSE WHO PROVIDE CAPITAL, GOODS, MACHINERY, IMPLEMENTS, SUPPLIES OR MEANS OF TRANSPORT TO ASSIST ILLICIT INTERNATIONAL TRAFFICKING (MINIMUM 15 YEARS).

ART. 63 STIPULATES THAT NO ONE BEING TRIED OR SENTENCED FOR ILLICIT DRUG TRAFFIC CAN BE GIVEN PROVISIONAL OR CONDITIONAL LIBERTY, COMMUTATION, CONDITIONAL SENTENCING OR PARDON. ART. 71 ALLOWS THE PREVENTATIVE DETENTION OF SUSPECTED DRUG TRAFFICKERS FOR UP TO

15 DAYS AND PERMITS THE POLICE TO CONTROL THE ENTRY AND EXIT OF TRAFFICKERS OR SUSPECTED TRAFFICKERS. BY VIRTUE OF THE SAME ARTICLE, THE RIGHT OF HABEAS CORPUS IS SUSPENDED FOR DRUG TRAFFICKERS. LAW DOES NOT STIPULATE A SPECIFIC AMOUNT IN POSSESSION TO CONSTITUTE TRAFFICKING, NOR DOES IT MAKE A DISTINCTION BETWEEN TRAFFICKING AND CONSPIRACY TO TRAFFIC.

(3) CULTIVATION, PRODUCTION AND ELABORATION: THE LAW (CH. IV) PROHIBITS THE DEVELOPMENT OF NEW COCA PLANTINGS, INCLUDING REPLANTING IN ESTABLISHED GROWING AREAS. THE CULTIVATION OF ALL VARIETIES OF COCA, POPPY AND MARIJUANA PASSES UNDER STATE CONTROL. ONCE THE PRIVATE OR COOPERATIVE CULTIVATION OF COCA HAS BEEN ERRADICATED OR SUBSTITUTED BY OTHER CROPS (AS OUTLINED IN ANOTHER SECTION OF THE LAW) ONLY THE STATE THROUGH THE NATIONAL

UNCLASSIFIED

PAGE 04 LIMA 06437 01 OF 02 201500Z

COCA ENTERPRISE (ENACO) IS AUTHORIZED TO CULTIVATE COCA, AND THEN ONLY FOR INDUSTRIAL, MEDICINAL OR RESEARCH PURPOSES. PARCELS USED TO CULTIVATE COCA WHICH ARE NOT BEING WORKED BY THEIR OWNERS ARE TO BE EXPROPRIATED (ART. 34). PARCELS DEDICATED ENTIRELY OR PARTIALLY TO THE CULTIVATION OF COCA WHOSE OWNERS/WORKERS DO NOT BEGIN TO ERRADICATE COCA AND SUBSTITUTE IT FOR OTHER CROPS, WILL BE CONFISCATED BY THE STATE AND GIVEN TO LANDLESS PEASANTS ACCORDING TO THE FOLLOWING CRITERIA:

-- PARCELS OF MORE THAN 10 HECTARES, WITH 2 YEARS
OF DATE OF LAW;

-- PARCELS OF 5-10 HECTARES, WITHIN 3 YEARS OF DATE OF LAW.

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PAGE 01 LIMA 06437 02 OF 02 201517Z
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R 201407Z JUL 78

FM AMEMBASSY LIMA

TO SECSTATE WASHDC 1032

UNCLAS SECTION 2 OF 2 LIMA 6437

ERRADICATION AND CROP SUBSTITUTION FOR INDIVIDUALLY-OWNED PARCELS SMALLER THAN 5 HECTARES, AND FOR COOPERATIVELY-OWNED AND WORKED PROPERTIES WILL BE DETERMINED ON AN ANNUAL BASIS BY THE MINISTRY OF AGRICULTURE. THE INTERNAL AND EXTERNAL COMMERCIALIZATION OF COCA LEAVES IS MONOPOLY OF THE STATE, THROUGH ENACO (ART. 41). SIMILARLY, THE IMPORTATION AND EXPORTATION OF ALL DRUGS LISTED IN SECTION 2 ABOVE, AS WELL AS THOSE LISTED IN THE ANNEX TO THE LAW (SEE LIMA AIRGRAM A-19 OF MARCH 2, 1978) ARE MONOPOLIES OF THE STATE. AS FAR AS WE ARE ABLE TO DETERMINE, THE MARCH 1978 LAW DOES NOT SPECIFY PENALTIES FOR THE ELABORATION OF NARCOTIC SUBSTANCES FROM CANNABIS, COCA AND/OR OPIUM. IN PRACTICE, HOWEVER, AND BY VIRTUE OF EARLIER LAWS, THE ELABORATION OF COCAINE, COCA BASE AND COCA PASTE IS ILLEGAL.

(4.) (A) FINANCIAL: AS DESCRIBED IN SECTION 2 ABOVE, THOSE WHO PROVIDE CAPITAL TO FINANCE ILLICIT TRAFFICKING OF DRUGS ARE SUBJECT TO A MINIMUM 15 YEAR PRISON TERM. THE LAW IS NOT SPECIFIC ON FINANCING OF CULTIVATION AND ELABORATION OF NARCOTICS. IN PRACTICE, HOWEVER, THE TERM TRAFFICKING INCLUDES THE ELABORATION OF NARCOTICS FOR ILLICIT SALE.

(B) PERU HAS COMPREHENSIVE CURRENCY CONTROL LAWS, BUT THEY ARE SOMETIMES MORE HONORED IN THE BREACH THAN IN PRACTICE, AND HAVE NOT BEEN AN EFFECTIVE RESTRAINT ON INTERNATIONAL NARCOTICS TRAFFIC. APPREHENDED TRAFFICKERS ARE SOMETIMES CHARGED WITH VIOLATION OF CURRENCY CONTROL LAWS AS WELL AS TRAFFICKING OFFENSES. UNCLASSIFIED

UNCLASSIFIED

PAGE 02 LIMA 06437 02 OF 02 201517Z

(5.) (A) AS STATED IN SECTION 3 ABOVE, THE LAW PERMITS PREVENTATIVE DETENTION OF SUSPECTED DRUG TRAFFICKERS FOR UP TO 15 DAYS. IN PRACTICE IN FIVE RECENT CASES, INVESTIGATIVE DETENTION AT POLICE LEVEL HAS VARIED FROM 10 DAYS TO SIX WEEKS WITH THE LATTER BEING A BIT LONGER THAN NORMAL. CONSULAR ACCESS IS GRANTED BY POLICE UNDER TERMS OF VIENNA CONVENTION ON CONSULAR AFFAIRS. CONSUL IS NOT USUALLY NOTIFIED DIRECTLY BY POLICE BUT OFTEN VIA DRUG ENFORCEMENT AGENCY REPRESENTATIVES.

(B) PRETRIAL JUDICIAL INVESTIGATION HAS VARIED, AGAIN IN PRACTICE, FROM 3 MONTHS TO 18 MONTHS. AVERAGE LENGTH PRETRIAL DETENTION IS ABOUT ONE YEAR.

(C)(I) BECAUSE TRIAL PROCESS TAKES PLACE IN SUPERIOR COURT (TRIBUNAL) AFTER LENGTHY INVESTIGATION AT LOWER COURT (JUZGADO), ACTUAL TRIAL LENGTH DEPENDS UPON NUMBER OF DEFENDANTS INVOLVED AND IS RELATIVELY SHORT IN MOST CASES. ALL DEFENDANTS AND

THEIR ATTORNEYS MUST BE HEARD AT LEAST ONCE DURING TRIAL PROCEEDINGS BEFORE PANEL OF THREE JUDGES. IN CASES INVOLVING ONLY ONE OR TWO DEFENDANTS, CASE IS HEARD IN ONE OR TWO SITTINGS AND REPORTS ARE ISSUED A WEEK OR TWO LATER. IN MORE COMPLEX CASES, TRIAL MAY LAST FOR MONTHS.

(II) THERE ARE TWO POINTS AT WHICH A REVIEW/CONFIRMATION PROCEDURE MAY BE USED: IN THE CASE OF INSUFFICIENT EVIDENCE DECISION (RELEASE) AT JUZGADO LEVEL AND AUTOMATIC APPEAL BY PUBLIC PROSECUTOR AFTER SUPERIOR COURT DECISION. AUTOMATIC REVIEW BY SUPERIOR COURT OF JUZGADO LEVEL DECISION TO RELEASE MAY BY LAW TAKE UP TO 60 DAYS, DURING WHICH ACCUSED REMAINS INCARCERATED. AVERAGE HAS BEEN ABOUT 45 DAYS. APPEAL TO SUPREME COURT BY PUBLIC PROSECUTOR OF SUPERIOR COURT VERDICT MAY BY LAW TAKE 60 DAYS AND AVERAGE HAS BEEN ABOUT 45 DAYS.

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PAGE 03 LIMA 06437 02 OF 02 201517Z

(D) LEGAL COUNSEL IS IN THEORY AVAILABLE AT NO COST TO INDIGENT DEFENDANTS. IN PRACTICE, HOWEVER, MOST DEFENDANTS PREFER NOT TO USE THE ATTORNEYS ON THE SHORT LIST PROVIDED, CHARACTERIZING THESE LAWYERS AS ABSOLUTELY INCOMPETENT. THERE ARE ADEQUATE ATTORNEYS TO UNDERTAKE DRUG CASES, ALTHOUGH MOST WELL-KNOWN PRIVATE FIRMS DO NOT DO SO. FEES ARE MATTER FOR NEGOTIATION BETWEEN CLIENT AND ATTORNEY. TO EMBASSY'S KNOWLEDGE, FEE USUALLY VARIES DEPENDING UPON CLIENT'S MEANS AND COMPLEXITY OF CASE BETWEEN \$1,000 AND \$10,000.

(E) LAW SPECIFICALLY PROHIBITS PAROLE OR CONDITIONAL LIBERTY.

(F) IT IS NOT CUSTOMARY TO EXPEL MINOR OFFENDERS. PERUVIAN INVESTIGATIONS POLICE (PIP) NARCOTICS DIVISION AVOIDS, WHENEVER POSSIBLE, ARRESTING FOREIGN MINOR OFFENDERS BUT GUARDIA CIVIL HAS DONE SO ON ONE RECENT OCCASION, WHICH WAS DISMISSED BY THE PIP FOR LACK OF EVIDENCE. IN MINOR CASES LAST YEAR, ONE OR TWO WERE EXPELLED UNDER IMMIGRATION/SECURITY LAWS RELATING TO VAGRANCY SINCE THEY WERE WITHOUT VISIBLE MEANS OF SUPPORT. THIS DOES NOT, HOWEVER, APPEAR TO BE VIABLE PROPOSITION THIS YEAR. SHLAUDEMAN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 jan 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: NARCOTICS, LAW, DRUG TRAFFIC, DRUG SEIZURES
Control Number: n/a
Copy: SINGLE
Draft Date: 20 jul 1978
Decaption Date: 01 jan 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 jan 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1978LIMA06437
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D780298-0589
Format: TEL
From: LIMA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1978/newtext/t19780739/aaaabgjd.tel
Line Count: 266
Litigation Code IDs:
Litigation Codes:
Litigation History:
Locator: TEXT ON-LINE, ON MICROFILM
Message ID: 626ba66f-c288-dd11-92da-001cc4696bcc
Office: ACTION L
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 5
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 78 STATE 170187, 78 LIMA A-19, 78 LIMA 1882, 78 LIMA 1932
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 21 apr 2005
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1941664
Secure: OPEN
Status: NATIVE
Subject: NARCOTICS LAWS
TAGS: SNAR, PE
To: STATE
Type: TE
vdkgvwkey: odb://SAS/SAS.dbo.SAS_Docs/626ba66f-c288-dd11-92da-001cc4696bcc
Review Markings:
Sheryl P. Walter
Declassified/Released
US Department of State
EO Systematic Review
20 Mar 2014
Markings: Sheryl P. Walter Declassified/Released US Department of State EO Systematic Review 20 Mar 2014